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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,680	08/14/2001	Charles M. Schmeichel	A20-009-01-US	3176

22854 7590 07/16/2002

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MINNEAPOLIS, MN 55402

EXAMINER

CHENEVERT, PAUL A

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 07/16/2002

7

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/930,680

Applicant(s)

SCHMEICHEL ET AL.

Examiner

Paul A. Chenevert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 May 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 August 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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**DETAILED ACTION***Oath/Declaration*

1. The Applicant's claim on the first line of the first page to the provisional application 60/225,109 filed on 14 AUG 00 is acknowledged under 35 U.S.C. 119 (e). Applicant has not complied with all requirements since the oath, declaration or application data sheet does not acknowledge the filing of any provisional application. A new oath, declaration or application data sheet is required in the body of which the present application should be identified by application number and filing date. ✓

*Drawings*

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because:
- a. Reference numbers 128 and 188 have both been used to designate the aperture to receive the pawl (200) in Figure 3. It is suggested that reference 128 be changed to 188. ✓
  - b. Reference numbers 50 and 56 have both been used to designate some unknown surface (see below) in Figures 3 & 10. It is suggested that reference 50 be changed to 56. ✓
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description:
- a. 120, 172, & 174 in Figure 3. ✓
  - b. 122 & 130 in Figure 8. ✓
  - c. 520 in Figure 15. ✓

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4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description:

- a. 22 in Figures 2 & 7. ✓
- b. 56 in Figures 3 & 10 (see above). ✓
- c. 234<sup>✓</sup> in Figure 4. ✓
- d. 34<sup>✓</sup> in Figure 7. ✓
- e. 114 & 116 in Figure 8. ✓
- f. 430<sup>✓</sup> in Figures 11 & 12. ✓
- g. 508<sup>✓</sup>, 536<sup>✓</sup>, 604<sup>✓</sup>, 630<sup>✓</sup>, & 664<sup>✓</sup> in Figures 13-15. ✓
- h. 804<sup>✓</sup> & 806<sup>✓</sup> in Figure 16. ✓
- i. 910<sup>✓</sup>, 920<sup>✓</sup>, 968<sup>✓</sup>, 1004<sup>✓</sup>, 1006<sup>✓</sup>, & 1021<sup>✓</sup> in Figures 17 & 18. 1006

5. The drawings are objected to because of the following minor informalities:

- a. The lead line for reference number 169 (fastening element) in Figure 8 should have a pointing arrow to describe a group of parts. ✓
- b. There are three reference number 226's in Figure 9. Two should be removed. ✓

6. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Specification*

7. The disclosure is objected to because of the following informalities:

- a. Page 2, line 20, "et al." should be inserted after "Schmeichel". ✓

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- b. Page 3, line 21, "the" should be inserted after "Additionally,". ✓
- c. Page 7, line 6, "12" should be changed to "14". ✓
- d. Page 7, line 28, "10" should be changed to "410". ✓
- e. Page 9, line 28, "8" should be changed to "6". ✓
- f. Page 10, line 23, "the proximate end 20" should be changed to "the end plate 20". ✓
- g. Page 11, line 30, "raised longitudinal portion 118" should be changed to "inwardly extending flange 118". ✓
- h. Page 13, line 3, "52, 54" should be inserted after "cavities". ✓
- i. Page 13, line 9, "182" should be changed to "177". ✓
- j. Page 13, line 26, "198" should be changed to "194". ✓
- k. Page 13, lines 19, 21, & 22, "a" should be changed to "the" before "foot 30", "release member 196", and "grip element 236". ✓
- l. Page 13, line 31 through page 14, line 1, "is preferably less than or equal to 90 degrees, preferably less than 90 degrees and preferably around 88 degrees" should be changed to "is less than or equal to 90 degrees and preferably around 88 degrees". ✓
- m. Page 14, line 4, "20" should be changed to "190". ✓
- n. Page 14, line 19, "198b of" should be inserted after "198a,". ✓
- o. Page 14, line 22, "This angle "B" is preferably about 1 to about 7, more preferably about 3 to about 5, more preferably about 4 degrees" should be changed to "This angle "B" is about 1 to 7 degrees and preferably about 4 degrees" ✓
- p. Page 15, line 19, "by a distance "d<sub>1</sub>" which is preferably equal to or less than 4 inches, more preferably 3 inches, even more preferably 2.5 inches, even more preferably" ✓

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2.0 inches, even more preferably 1.5 inches, even more preferably 1.25 inches, more preferably 1.0 inch, and even more preferably seven-eighths of an inch. In a more preferred embodiment, this distance will be about 13/16ths of an inch.” should be changed to “by a distance “d<sub>1</sub>”, which is equal to or less than 4 inches and preferably about 13/16ths of an inch.”.

- q. Page 16, line 27 (twice) and page 17, line 15, “42, 40” should be changed to “40, 42”. ✓
- r. Page 18, line 3, “a contact surface 139” should be changed to “the contact surface 139”. ✓
- s. Page 18, line 14, “148” (first occurrence) should be changed to “146”. ✓
- t. Page 19, line 1, “held” should be changed to “hold”. ✓
- u. Page 19, line 20, “possibility” should be changed to “possible”. ✓

Appropriate correction is required.

### *Claim Objections*

8. Claims 1-11 are objected to because of the following informalities:

- a. Claims 1 & 7, line 10, “portion of the” should be changed to “portion of an”. ✓
- b. Claims 1 & 7, line 13, “an end plate” should be changed to “wherein”. ✓
- c. Claim 9 should depend on claim 8. ✓
- d. Claim 10 should depend on claim 9. ✓
- e. Claim 11 should depend on claim 10. ✓

Appropriate correction is required.

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9. Claims 2 & 13-15 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. ✓

10. Claims 7-11 are objected to because claim 7 is nearly identical to claim 1 except for the reversal of the introduction of the end plate and the end plate engagement member. Claims 8-11 (if the above objection on dependency is correct) are identical to 3-6. Applicant is required to cancel the claim(s) or amend the claim(s) to introduce new limitations not claimed in claim 1. ✓

***Claim Rejections - 35 USC § 112***

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

12. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. The preambles of claims 1, 7, & 12 introduce a tonneau cover apparatus in a subcombination with a pickup truck in the intended use statement. The claims later state a combination relationship between the support frame of the tonneau cover apparatus and the cargo box of the pickup truck, by claiming the support frame is *attached* to the cargo box. It is unclear whether a combination or subcombination is intended in this claim. ✓

The intended relationship should be introduced from the beginning and followed throughout this and all dependent claims.



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13. It is thought (from the telephonic conversation of 27 JUN 02) that the Applicant intends to claim a combination of the tonneau cover apparatus with a pick up truck. If this is in fact the case, then the limitations located in the preamble should be positively recited. ✓

***Claim Rejections - 35 USC § 102***

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. Claims 1-3, 7, & 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Weldy et al.

Weldy et al. teach a tonneau cover apparatus (cover 60) comprising: a support frame (rails 10 & 20); an end plate engagement member (rail 10 located above the tailgate) having a radial receiving surface (groove 16); an end plate (fastener 70) having a radial engaging surface (enlarged end); and a locking member (U-shaped projection 74).

***Allowable Subject Matter***

16. Claims 12-16 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, and objections set forth in this Office action.

17. Claims 4-6 & 9-11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, and objections set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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18. The following is a statement of reasons for the indication of allowable subject matter: the prior art does not show or make obvious Applicant's ~~pair of end plate engagement member~~  
*locking member*  
~~having radial receiving surfaces.~~

**Conclusion**

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul A. Chenevert whose telephone number is 703-305-0837. The examiner can normally be reached on Mon-Fri (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn D. Dayoan can be reached on 703-308-3102. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-8623 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1134.

Paul A. Chenevert  
Examiner  
Art Unit 3612

PAC  
July 3, 2002



*7/10/02*

D. GLENN DAYOAN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

*PAC*